

SENATE, No. 898

STATE OF NEW JERSEY
216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

"Protection for Individuals with Developmental Disabilities in Institutional and Community Settings Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 **AN ACT** concerning persons with developmental disabilities and
2 supplementing Titles 26 and 30 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "Protection
8 for Individuals with Developmental Disabilities in Institutional and
9 Community Settings Act."

10

11 2. As used in sections 2 to 6, 8 to 10, and 12 to 19 of
12 P.L. , c. (C.) (pending before the Legislature as this bill):

13 "Authorized family member" means a relative of the individual
14 with a developmental disability, authorized by the individual's
15 guardian, or by the individual if the individual is his own guardian,
16 to receive information pursuant to P.L. , c. (C.) (pending
17 before the Legislature as this bill).

18 "Commissioner" means the Commissioner of Human Services.

19 "Community residence for the developmentally disabled" means
20 a community residence for the developmentally disabled as defined
21 in section 2 of P.L.1977, c.448 (C.30:11B-2), and includes, but is
22 not limited to, group homes and supervised apartments.

23 "Day program" means a program that an individual with a
24 developmental disability attends on a regular basis to receive
25 training in life and vocational skills, as appropriate, during daytime
26 hours.

27 "Department" means the Department of Human Services.

28 "Developmental center" means a State developmental center.

29 "Licensee" means an individual, partnership, corporation, or
30 other entity responsible for providing services associated with the
31 operation of a community residence for the developmentally
32 disabled or private licensed facility, as applicable.

33 "Negative licensing action" means an action taken that imposes a
34 restriction on a licensee of a community residence for the
35 developmentally disabled or private licensed facility, and may
36 include suspension of admissions, issuance of a provisional license,
37 reduction in the licensed capacity, non-renewal of a license,
38 suspension of a license, or revocation of a license.

39 "Office of Licensing" or "office" means the licensing unit of the
40 Department of Human Services for programs in the Division of
41 Developmental Disabilities.

42 "Private licensed facility" means a facility licensed by the
43 Department of Human Services to provide services to individuals
44 with developmental disabilities, but is not operated by the State.

45 "Staff member" means a person whose employment involves
46 providing direct care to individuals with developmental disabilities
47 residing in a community residence for the developmentally

1 disabled, developmental center or private licensed facility, or
2 providing services to enhance the life or vocational skills of
3 individuals with developmental disabilities attending a day
4 program, but excludes health care professionals licensed pursuant to
5 Title 45 of the Revised Statutes.

6 “Substantiated” means the available information obtained during
7 the investigation of an allegation of abuse, neglect, or exploitation
8 indicates a finding by a preponderance of the evidence that an
9 individual with a developmental disability has been harmed or
10 placed at substantial risk of harm by a caretaker or staff member.

11 “Supervised apartment” means an apartment that is occupied by
12 an individual with a developmental disability and is leased or
13 owned by a licensee of a community residence for the
14 developmentally disabled.

15 “Unfounded” means the available information obtained during
16 the investigation of an allegation of abuse, neglect, or exploitation
17 indicates a finding that there is no risk to the safety or welfare of
18 the individual with a developmental disability.

19 “Unsubstantiated” means the available information obtained
20 during the investigation of an allegation of abuse, neglect, or
21 exploitation provides some indication of a finding that an individual
22 with a developmental disability has been harmed or placed at
23 substantial risk of harm by a caretaker or staff member.

24
25 3. A community residence for the developmentally disabled
26 shall be subject to the following provisions:

27 a. If a licensee of a community residence for the
28 developmentally disabled is required to provide a plan of correction
29 as a result of an inspection by the Office of Licensing that provides
30 for inquiry into the facilities, records, equipment, sanitary
31 conditions, accommodations, and management of an individual with
32 a developmental disability, and that plan has not been successfully
33 implemented, as determined by the supervisor of the case manager
34 of the individual or the office, within 30 days of the date that the
35 licensee submitted the plan to the office, the individual with a
36 developmental disability residing in that residence shall be removed
37 from the residence if the supervisor, in consultation with the office,
38 determines that the licensee’s failure to implement the plan of
39 correction threatens the health and well-being of that individual.

40 b. If the health, safety, or well-being of an individual with a
41 developmental disability residing in a community residence for the
42 developmentally disabled is threatened because of a licensee’s
43 noncompliance with the standards adopted by regulation of the
44 department, the individual with a developmental disability shall be
45 removed from the residence, and the licensee shall be subject to
46 negative licensing action by the Office of Licensing.

1 c. (1) The department shall have the authority to impose a
2 penalty in an amount of \$350 per day on the licensee of a
3 community residence for the developmentally disabled for a
4 repeated failure to implement a required plan of correction. The
5 penalty shall be payable to the Treasurer of the State of New Jersey
6 and shall be used to provide services to individuals with
7 developmental disabilities.

8 (2) If the department determines that a repeated failure to
9 implement a required plan of correction endangers the health and
10 well-being of an individual with a developmental disability, the
11 department may, upon notice and after hearing, revoke the license
12 issued to operate the community residence for the developmentally
13 disabled.

14

15 4. A private licensed facility shall be subject to the following
16 provisions:

17 a. If a licensee of a private licensed facility is required to
18 provide a plan to correct deficiencies as a result of an inspection by
19 the Office of Licensing that provides for inquiry into the physical
20 environment, records, equipment, sanitary conditions,
21 accommodations, and management of an individual with a
22 developmental disability, and those deficiencies have not been
23 corrected within 30 days of the date that the licensee submitted the
24 plan to the office, the individual with a developmental disability
25 residing in that facility shall be removed from the facility if the
26 office determines that the licensee's failure to implement the plan to
27 correct the deficiencies threatens the health and well-being of that
28 individual.

29 b. If the health, safety, or well-being of an individual with a
30 developmental disability residing in a private licensed facility is
31 threatened because of a licensee's noncompliance with the standards
32 adopted by regulation of the department, the individual with a
33 developmental disability shall be removed from the private licensed
34 facility, and the licensee shall be subject to negative licensing
35 action by the Office of Licensing.

36 c. (1) The department shall have the authority to impose a
37 penalty in an amount of \$350 per day on the licensee of a private
38 licensed facility for a repeated failure to implement a plan to correct
39 the deficiencies. The penalty shall be payable to the Treasurer of
40 the State of New Jersey and shall be used to provide services to
41 individuals with developmental disabilities.

42 (2) If the department determines that a repeated failure to
43 implement a plan to correct deficiencies endangers the health and
44 well-being of an individual with a developmental disability, the
45 department may, upon notice and after hearing, revoke the license
46 issued to operate the private licensed facility.

1 5. A developmental center shall be subject to the following
2 provisions:

3 a. If a developmental center is required to provide a plan to
4 correct deficiencies as a result of an inspection by the Division of
5 Health Facilities Evaluation and Licensing in the Department of
6 Health that allows for inquiry into the physical environment,
7 records, equipment, sanitary conditions, accommodations, and
8 management of an individual with a developmental disability, and
9 those deficiencies have not been corrected within 30 days of the
10 date that the developmental center submitted the plan to the
11 division, the individual with a developmental disability residing in
12 that developmental center shall be removed from the developmental
13 center if the division determines that the developmental center's
14 failure to implement the plan to correct the deficiencies threatens
15 the health and well-being of that individual.

16 b. If the health, safety, or well-being of an individual with a
17 developmental disability residing in a developmental center is
18 threatened because of the developmental center's noncompliance
19 with the federal standards adopted under Part 483 of Title 42 of the
20 Code of Federal Regulations, the individual with a developmental
21 disability shall be removed from the developmental center. The
22 developmental center shall be subject to such negative action
23 against its certification as determined by the division, in accordance
24 with federal law.

25 c. If the division determines that failure to implement a plan of
26 correction poses an immediate jeopardy to the health and safety of
27 the residents, the division shall terminate the certification of the
28 developmental center, as provided for in section 442.117 of Title
29 42, Code of Federal Regulations.

30

31 6. A provider of a day program shall submit to the Division of
32 Developmental Disabilities in the department a plan to correct
33 deficiencies as a result of an inspection by the Office of Licensing
34 or another unit of the department that provides for inquiry into the
35 physical environment, records, equipment, sanitary conditions, and
36 management of an individual with a developmental disability
37 attending the day program. A day program shall be subject to the
38 following provisions:

39 a. If a provider of a day program is required to provide a plan
40 to correct deficiencies as a result of an inspection conducted
41 pursuant to this section, and that plan has not been successfully
42 implemented, as determined by the Office of Licensing or another
43 unit of the department, within 30 days of the date that the provider
44 of the day program submitted the plan to the office or other unit of
45 the department, as applicable, an individual with a developmental
46 disability shall no longer attend that day program if the office or
47 other unit of the department determines that the failure of the day

1 program to implement the plan threatens the health and well-being
2 of that individual.

3 b. If the health, safety, or well-being of an individual with a
4 developmental disability attending a day program is threatened
5 because the day program is not capable of providing a healthy and
6 safe environment to an individual with a developmental disability,
7 as determined by an inspection conducted pursuant to this section,
8 the Division of Developmental Disabilities may remove the
9 individual with a developmental disability from the day program
10 and the department may, upon notice and after hearing, reduce the
11 number of individuals with developmental disabilities eligible for
12 services from the department who attend the day program or take
13 such other negative action against the provider of the day program
14 as the department determines necessary.

15 c. (1) The department shall have the authority to impose a
16 penalty in an amount of \$350 per day on the provider of a day
17 program for a repeated failure to implement a plan to correct
18 deficiencies. The penalty shall be payable to the Treasurer of the
19 State of New Jersey and shall be used to provide services to
20 individuals with developmental disabilities.

21 (2) If the department determines that a repeated failure to
22 implement a plan to correct deficiencies endangers the health and
23 well-being of an individual with a developmental disability
24 attending the day program, the department may, upon notice and
25 after hearing, rescind the contract of the provider of the day
26 program with the Division of Developmental Disabilities or the
27 department, as applicable, or take such other negative action against
28 the provider as the division or department determines necessary.

29

30 7. A nursing home licensed by the Department of Health shall
31 be subject to the following provisions:

32 a. If a licensee of a nursing home is required to provide a plan
33 to correct deficiencies as a result of an inspection by the Division of
34 Health Facilities Evaluation and Licensing in the Department of
35 Health that provides for inquiry into the facilities, records,
36 equipment, sanitary conditions, accommodations, and management
37 of an individual with a developmental disability, and those
38 deficiencies have not been corrected within 30 days of the date that
39 the licensee submitted the plan to the division, the individual with a
40 developmental disability residing in that nursing home shall be
41 removed from the nursing home if the division determines that the
42 licensee's failure to implement the plan to correct the deficiencies
43 threatens the health and well-being of that individual.

44 b. If the health, safety, or well-being of an individual with a
45 developmental disability residing in a nursing home is threatened
46 because of a licensee's noncompliance with the standards adopted
47 by regulation of the department, the individual with a

1 developmental disability shall be removed from the nursing home,
2 and the licensee shall be subject to negative licensing action.

3 c. (1) The department shall have the authority to impose a
4 penalty in an amount of \$350 per day on the licensee of the nursing
5 home for a repeated failure to implement a plan to correct the
6 deficiencies. The penalty shall be payable to the Treasurer of the
7 State of New Jersey and shall be used to provide services to
8 individuals with developmental disabilities.

9 (2) If the department determines that a repeated failure to
10 implement a plan to correct deficiencies endangers the health and
11 well-being of an individual with a developmental disability, the
12 department may, upon notice and after hearing, revoke the license
13 issued to operate the nursing home.

14 d. Before taking negative licensing action pursuant to this
15 section, the department shall give notice personally, or by mail, to
16 the last known address of the licensee of a nursing home with return
17 receipt requested. The notice shall afford the licensee the
18 opportunity to be heard and to contest the department's action. The
19 hearing shall be conducted in accordance with the "Administrative
20 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

21 e. As used in this section, "negative licensing action" means an
22 action taken that imposes a restriction on a licensee and may
23 include suspension of admissions, issuance of a provisional license,
24 reduction in the licensed capacity, non-renewal of a license,
25 suspension of a license, or revocation of a license.

26

27 8. a. The Department of Human Services shall require a
28 community residence for the developmentally disabled to comply
29 with the following provisions as a condition of maintaining its
30 license:

31 (1) A staff member of a community residence for the
32 developmentally disabled shall, annually, undergo an examination
33 by a physician to ascertain whether the staff member is physically
34 and mentally capable of fulfilling the job duties of a staff member,
35 as specified on the form listing a staff member's job duties prepared
36 by the department pursuant to section 12 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) and completed by the
38 physician pursuant to this subsection. Upon conclusion of the
39 examination, the physician shall provide the staff member with a
40 statement as to whether the staff member is capable of fulfilling the
41 duties of a staff member, and shall complete and attach the form on
42 which the physician shall indicate, for each duty, whether the staff
43 member is capable of fulfilling the duty. The licensee of the
44 community residence for the developmentally disabled may, at its
45 discretion, require further physical or mental health examinations of
46 the staff member.

1 (2) Upon receipt of the physician statement and the form
2 completed pursuant to paragraph (1) of this subsection, a staff
3 member shall provide the statement and form to the licensee of the
4 community residence for the developmentally disabled. If a staff
5 member fails to provide the statement and form, the licensee shall
6 have the authority to: stop any payments to the staff member; seek
7 recovery of any payments to the staff member from the date that the
8 statement and form were due; and not resume payment until such
9 time as the staff member submits the statement and form.

10 (3) If, after undergoing the examination, a staff member is
11 unable to provide the physician statement and the form completed
12 pursuant to paragraph (1) of this subsection, the licensee of the
13 community residence for the developmentally disabled may
14 reassign the staff member to duties that do not involve contact with
15 individuals with developmental disabilities.

16 b. (1) In the event that an individual with a developmental
17 disability is not capable of managing the individual's own funds, a
18 staff member of a community residence for the developmentally
19 disabled who is responsible for making purchases and
20 disbursements on the individual's behalf shall not make such a
21 purchase or disbursement unless that purchase or disbursement
22 reflects the specific needs of the individual with a developmental
23 disability.

24 (2) Over a four-year period, the Office of Auditing in the
25 department shall review a random sample of one month's worth of
26 receipts or records for purchases and disbursements made on behalf
27 of each individual with a developmental disability residing in a
28 community residence for the developmentally disabled. The case
29 manager and the case manager's supervisor shall also review a
30 random sample of receipts or records of such purchases and
31 disbursements when conducting visits pursuant to section 8 of
32 P.L.1983, c.524 (C.30:6D-20) or section 14 of P.L. c. (C.)
33 (pending before the Legislature as this bill). If it is determined that
34 a purchase or disbursement does not reflect the specific needs of the
35 individual with a developmental disability, that fact shall be
36 documented and the commissioner or the commissioner's designee
37 shall be so advised. The commissioner or the commissioner's
38 designee may instruct the licensing agency to take negative
39 licensing action.

40 (3) (a) If there is evidence from a review of a random sampling
41 of receipts or records performed pursuant to paragraph (2) of this
42 subsection that an inappropriate purchase or disbursement entailed
43 an egregious amount of money, the commissioner or the
44 commissioner's designee shall report the purchase or disbursement
45 to the Attorney General.

46 (b) If there is evidence that a case manager was aware of an
47 egregious inappropriate purchase or disbursement and failed to

1 document that fact or notify the case manager's supervisor, the
2 commissioner or the commissioner's designee shall notify the
3 Attorney General.

4 c. A staff member shall annually attend a continuing education
5 program conducted or approved by the department, as provided for
6 in section 12 of P.L. , c. (C.) (pending before the
7 Legislature as this bill).

8 d. A staff member shall demonstrate to the case manager the
9 staff member's ability to provide any physical assistance that
10 individuals in the community residence for the developmentally
11 disabled may require.

12 e. A staff member shall immediately notify the responsible
13 placing agency in the event of a lapse in the individual's
14 participation or attendance in the individual's day program that
15 exceeds a duration of five consecutive days, with the exception of a
16 planned vacation or a documented medical reason.

17
18 9. a. The Department of Human Services shall require a
19 developmental center and private licensed facility to comply with
20 the following provisions:

21 (1) A staff member of a developmental center or private
22 licensed facility shall, annually, undergo an examination by a
23 physician to ascertain whether the staff member is physically and
24 mentally capable of fulfilling the job duties of a staff member, as
25 specified on the form listing a staff member's job duties prepared
26 by the department pursuant to section 12 of P.L. , c. (C.)
27 (pending before the Legislature as this bill) and completed by the
28 physician pursuant to this subsection. Upon conclusion of the
29 examination, the physician shall provide the staff member with a
30 statement as to whether the staff member is capable of fulfilling the
31 duties of a staff member, and shall complete and attach the form on
32 which the physician shall indicate, for each duty, whether the staff
33 member is capable of fulfilling the duty. The chief executive
34 officer of the developmental center or private licensed facility or
35 the officer's designee may, at the officer's or designee's discretion,
36 require further physical or mental health examinations of the staff
37 member.

38 (2) Upon receipt of the physician statement and the form
39 completed pursuant to paragraph (1) of this subsection, a staff
40 member shall provide the statement and form to the chief executive
41 officer of the developmental center or private licensed facility or
42 the officer's designee. If a staff member fails to provide the
43 statement and form completed pursuant to paragraph (1) of this
44 subsection, the chief executive officer or the officer's designee shall
45 have the authority to: stop any payments to the staff member; seek
46 recovery of any payments to the staff member from the date that the

1 statement and form were due; and not resume payment until such
2 time as the staff member submits the statement and form.

3 (3) The chief executive officer or the officer's designee may
4 reassign the staff member to duties that do not involve contact with
5 individuals with developmental disabilities. If the staff member is
6 employed by the department, the staff member shall retain any
7 available right of review by the Civil Service Commission.

8 b. (1) In the event that an individual with a developmental
9 disability is not capable of managing the individual's own funds, a
10 staff member who is responsible for making purchases and
11 disbursements on the individual's behalf shall not make such a
12 purchase or disbursement unless that purchase or disbursement
13 reflects the specific needs of the individual with a developmental
14 disability.

15 (2) Over a four-year period, the Office of Auditing in the
16 department shall review a random sample of one month's worth of
17 receipts or records for purchases and disbursements made on behalf
18 of each individual with a developmental disability residing in a
19 developmental center or private licensed facility. If it is determined
20 that a purchase or disbursement does not reflect the specific needs
21 of the individual with a developmental disability, that fact shall be
22 documented and the commissioner or the commissioner's designee
23 shall be so advised. The department may take negative licensing
24 action against a private licensed facility.

25 In the case of a developmental center, the department shall
26 advise the Division of Health Facilities Evaluation and Licensing in
27 the Department of Health for the purpose of taking negative action
28 against the certification of the developmental center.

29 (3) If there is evidence from a review of a random sampling of
30 receipts or records performed pursuant to paragraph (2) of this
31 subsection that an inappropriate purchase or disbursement entailed
32 an egregious amount of money, the commissioner or the
33 commissioner's designee shall report the purchase or disbursement
34 to the Attorney General.

35 c. A staff member of a developmental center or private
36 licensed facility shall annually attend a continuing education
37 program conducted or approved by the department, as provided for
38 in section 12 of P.L. , c. (C.) (pending before the Legislature
39 as this bill).

40 d. A staff member shall demonstrate to the chief executive
41 officer of the developmental center or private licensed facility, or
42 the officer's designee, the staff member's ability to provide any
43 physical assistance that individuals in the developmental center or
44 private licensed facility may require.

45

46 10. a. The Department of Human Services shall require a day
47 program to comply with the following provisions as a condition of

1 operating a day program for individuals with developmental
2 disabilities eligible for services from the Division of Developmental
3 Disabilities.

4 (1) A staff member of a day program shall, annually, undergo an
5 examination by a physician to ascertain whether the staff member is
6 physically and mentally capable of fulfilling the job duties of a staff
7 member, as specified on the form listing a staff member's job duties
8 prepared by the department pursuant to section 12 of
9 P.L. , c. (C.) (pending before the Legislature as this bill)
10 and completed by the physician pursuant to this subsection. Upon
11 conclusion of the examination, the physician shall provide the staff
12 member with a statement as to whether the staff member is capable
13 of fulfilling the duties of a staff member, and shall complete and
14 attach the form on which the physician shall indicate, for each duty,
15 whether the staff member is capable of fulfilling the duty. The
16 provider of a day program may, at its discretion, require further
17 physical or mental health examinations of the staff member.

18 (2) Upon receipt of the physician statement and the form
19 completed pursuant to paragraph (1) of this subsection, a staff
20 member shall provide the statement and form to the provider of the
21 day program. If a staff member fails to provide the statement and
22 form, the provider shall have the authority to: stop any payments to
23 the staff member; seek recovery of any payments to the staff
24 member from the date that the statement and form were due; and
25 not resume payment until such time as the staff member submits the
26 statement and form.

27 (3) If, after undergoing the examination, a staff member is
28 unable to provide the physician statement and the form completed
29 pursuant to paragraph (1) of this subsection, the provider of the day
30 program may reassign the staff member to duties that do not involve
31 contact with individuals with developmental disabilities.

32 b. A staff member shall annually attend a continuing education
33 program conducted or approved by the department, as provided for
34 in section 12 of P.L. , c. (C.) (pending before the
35 Legislature as this bill).

36 c. A staff member shall demonstrate to the provider of a day
37 program the staff member's ability to provide any physical
38 assistance that individuals attending the day program may require.

39

40 11. a. The Department of Health shall require a nursing home to
41 comply with the following provisions:

42 (1) A staff member of a nursing home shall, annually, undergo
43 an examination by a physician to ascertain whether the staff
44 member is physically and mentally capable of fulfilling the job
45 duties of a staff member, as specified on the form listing a staff
46 member's job duties prepared by the Department of Human
47 Services in consultation with the Department of Health pursuant to

1 section 12 of P.L. , c. (C.) (pending before the Legislature
2 as this bill), and completed by the physician pursuant to this
3 subsection. Upon conclusion of the examination, the physician
4 shall provide the staff member with a statement as to whether the
5 staff member is capable of fulfilling the duties of a staff member,
6 and shall complete and attach the form on which the physician shall
7 indicate, for each duty, whether the staff member is capable of
8 fulfilling the duty. The nursing home administrator or the
9 administrator's designee may, at the administrator's or designee's
10 discretion, require further physical or mental health examinations of
11 the staff member.

12 (2) Upon receipt of the physician statement and the form
13 completed pursuant to paragraph (1) of this subsection, a staff
14 member shall provide the statement and form to the nursing home
15 administrator or the administrator's designee. If a staff member
16 fails to provide the statement and the form completed pursuant to
17 paragraph (1) of this subsection, the nursing home administrator or
18 the administrator's designee shall have the authority to: stop any
19 payments to the staff member; seek recovery of any payments to the
20 staff member from the date that the statement and form were due;
21 and not resume payment until such time as the staff member
22 submits the statement and form.

23 (3) The nursing home administrator or the administrator's
24 designee may reassign the staff member to duties that do not
25 involve contact with individuals with developmental disabilities.

26 b. (1) In the event that an individual with a developmental
27 disability is not capable of managing the individual's own funds, a
28 staff member who is responsible for making purchases and
29 disbursements on the individual's behalf shall not make such a
30 purchase or disbursement unless that purchase or disbursement
31 reflects the specific needs of the individual with a developmental
32 disability.

33 (2) Over a four-year period, the Office of Auditing in the
34 Department of Human Services shall review a random sample of
35 one month's worth of receipts or records for purchases and
36 disbursements made on behalf of each individual with a
37 developmental disability residing in a nursing home. If it is
38 determined that a purchase or disbursement does not reflect the
39 specific needs of the individual with a developmental disability, that
40 fact shall be documented and the Commissioner of Health or the
41 commissioner's designee shall be so advised. The commissioner or
42 the commissioner's designee may instruct the Division of Health
43 Facilities Evaluation and Licensing in the Department of Health to
44 take negative licensing action.

45 (3) If there is evidence from a review of a random sampling of
46 receipts or records performed pursuant to paragraph (2) of this
47 subsection that an inappropriate purchase or disbursement entailed

1 an egregious amount of money, the commissioner or the
2 commissioner's designee shall report the purchase or disbursement
3 to the Attorney General.

4 c. A staff member shall annually attend a continuing education
5 program conducted or approved by the Department of Human
6 Services, in consultation with the Department of Health, as
7 provided for in section 12 of P.L. , c. (C.) (pending before
8 the Legislature as this bill).

9 d. A staff member shall demonstrate to the nursing home
10 administrator or the administrator's designee the staff member's
11 ability to provide any physical assistance that individuals with
12 developmental disabilities residing in the nursing home may
13 require.

14 e. As used in this section, "staff member" means a person
15 whose employment involves providing direct care to individuals
16 with developmental disabilities residing in a nursing home, but
17 excludes health care professionals licensed pursuant to Title 45 of
18 the Revised Statutes.

19
20 12. a. The department may issue a provisional license to operate
21 a community residence for the developmentally disabled or private
22 licensed facility, not to exceed a three-month period, during which
23 time the licensee of the community residence for the
24 developmentally disabled or the licensee of the private licensed
25 facility, as appropriate, shall demonstrate the ability to comply with
26 the provisions of P.L. , c. (C.) (pending before the
27 Legislature as this bill) and the applicable licensing standards
28 adopted by regulation of the department.

29 b. The department shall conduct, or approve another entity to
30 conduct, a continuing education program for a staff member of a
31 community residence for the developmentally disabled,
32 developmental center, private licensed facility, and day program.

33 c. The department shall prepare a form listing the job duties of
34 a staff member of a community residence for the developmentally
35 disabled, developmental center, private licensed facility and day
36 program, and shall annually distribute the form for completion by
37 the physician of the staff member, as appropriate, in accordance
38 with the provisions of sections 8, 9, and 10 of P.L. , c. (C.)
39 (pending before the Legislature as this bill), as applicable. The
40 form shall contain a check list on which the physician shall indicate
41 a person's ability to perform each duty.

42 d. The department, in consultation with the Department of
43 Health, shall:

44 (1) conduct, or approve another entity to conduct, a continuing
45 education program for a staff member of a nursing home, as defined
46 in subsection e. of section 11 of P.L. , c. (C.) (pending
47 before the Legislature as this bill); and

1 (2) prepare a form listing the job duties of a staff member of a
2 nursing home and shall annually distribute the form for completion
3 by the physician of the staff member in accordance with the
4 provisions of section 11 of P.L. , c. (C.) (pending before
5 the Legislature as this bill). The form shall contain a check list on
6 which the physician shall indicate a staff member's ability to
7 perform each duty.

8
9 13. a. A case manager conducting a visit to an individual with a
10 developmental disability, in accordance with the provisions of
11 section 8 of P.L.1983, c.524 (C.30:6D-20), shall, upon completion
12 of the visit, provide a written report to the case manager's
13 supervisor and, if requested, to the guardian or authorized family
14 member, as appropriate, of the individual with a developmental
15 disability. The report, which shall be sent electronically to the case
16 manager's supervisor and, if practicable, electronically to the
17 guardian or authorized family member, shall include information
18 pertaining to the care and safety of the individual with a
19 developmental disability, including, but not limited to, personal
20 hygiene and grooming, nutritional and clothing needs, overall
21 sanitary and living conditions of the community residence for the
22 developmentally disabled, and the general well-being of the
23 individual with a developmental disability.

24 The reports made pursuant to this subsection may be shared with
25 persons other than the guardian or authorized family member, if the
26 guardian or individual with the developmental disability so
27 authorizes in writing.

28 b. The case manager shall also review, on a monthly basis, any
29 records required to be maintained on behalf of an individual with a
30 developmental disability. The case manager's supervisor shall
31 review the records when the supervisor performs the visit required
32 by section 14 of P.L. , c. (C.) (pending before the
33 Legislature as this bill). The case manager or supervisor, or both,
34 as applicable, shall provide written documentation that the records
35 were reviewed and include that documentation with the other
36 records maintained on behalf of an individual with a developmental
37 disability.

38
39 14. The supervisor of a case manager shall, over a three-year
40 period, visit 100 percent of the individuals with developmental
41 disabilities who are assigned to the case manager, except that
42 individuals who are their own guardians may decline such visits by
43 providing a written statement to that effect to the department. One
44 third of the visits shall be conducted in each of the first three years.
45 If, after three years, the supervisor determines, based on certain
46 factors, including, but not limited to, the number and age of the
47 individuals with developmental disabilities residing in a community

1 residence for the developmentally disabled, the individuals' regular
2 attendance at day programs, and lack of complaints after three
3 years, the individuals in the community residence for the
4 developmentally disabled are not at risk for abuse, neglect, or
5 exploitation, the visits may be reduced to one visit every four years.

6 a. Each visit shall be conducted by the supervisor of the case
7 manager in coordination with a case manager who is unaffiliated
8 with, and unfamiliar to, the assigned case manager. The supervisor
9 and unaffiliated case manager shall prepare and provide to the
10 guardian or authorized family member of the individual with a
11 developmental disability a written report pertaining to the care and
12 safety of that individual.

13 b. If, as a result of a visit conducted pursuant to subsection a.
14 of this section, a supervisor determines that a community residence
15 for the developmentally disabled is not capable of providing care or
16 training, or both, to an individual with a developmental disability
17 the supervisor shall so advise the commissioner or the
18 commissioner's designee, who shall instruct the licensing agency to
19 take negative licensing action. In such a case, the supervisor shall
20 provide a copy of the written report prepared pursuant to section 13
21 of P.L. , c. (C.) (pending before the Legislature as this bill)
22 and the written report concerning a community residence for the
23 developmentally disabled prepared pursuant to a. of this section to
24 the commissioner or the commissioner's designee.

25 c. If, based on the supervisor's and unaffiliated case manager's
26 visit and input from family members or the guardian of the
27 individual with a developmental disability, the supervisor
28 determines that the individual would benefit from a change in the
29 individual's case manager, the supervisor shall assign a different
30 case manager to the individual.

31 d. The Office of Licensing shall annually conduct routine
32 unannounced visits of 25 percent of community residences for the
33 developmentally disabled Statewide. These visits shall include a
34 review of financial records, including receipts for purchases and
35 disbursement.

36
37 15. Before taking a negative licensing action or any other
38 negative action pursuant to P.L. , c. (C.) (pending before the
39 Legislature as this bill), the department shall give notice personally,
40 or by mail, to the last known address of the licensee of a community
41 residence for the developmentally disabled or private licensed
42 facility, or the provider of a day program, as appropriate, with
43 return receipt requested. The notice shall afford the licensee or
44 provider the opportunity to be heard and to contest the department's
45 action. The hearing shall be conducted in accordance with the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.).

1 16. The Special Response Unit shall compile data about any
2 investigation conducted as a result of a report made pursuant to
3 section 3 of P.L.2010, c.5 (C.30:6D-75) concerning abuse, neglect,
4 or exploitation of an individual with a developmental disability
5 residing in a community residence for the developmentally
6 disabled, developmental center, private licensed facility, or nursing
7 home, and shall issue an annual report as provided in this section.
8 The report, which shall be made available on the website of the
9 department and contain non-identifying information, shall, at a
10 minimum, include:

11 a. the number of individuals with developmental disabilities
12 who were the subject of an allegation of abuse, neglect, or
13 exploitation, and the number of substantiated, unsubstantiated, and
14 unfounded allegations;

15 b. the number of deaths, if any, of individuals with
16 developmental disabilities who were the subject of a report of
17 abuse, neglect, or exploitation, the cause of death, and the types of
18 residences in which the individuals resided;

19 c. the number of case managers or case managers' supervisors
20 who have been reassigned or terminated, or both, as a result of an
21 investigation of abuse, neglect, or exploitation of an individual with
22 a developmental disability; and

23 d. the number of case managers or case managers' supervisors
24 against whom a civil or criminal action has been brought as a result
25 of an allegation of abuse, neglect, or exploitation of an individual
26 with a developmental disability.

27

28 17. a. In addition to the requirements of section 12 of P.L.2012,
29 c.69 (C.30:6D-5.16), a provider of a day program shall submit to
30 the Division of Developmental Disabilities a copy of its monthly
31 report of individuals with developmental disabilities who attend the
32 day program. The report shall be submitted no later than 14 days
33 after the end of each month.

34 b. A provider of a day program shall not seek reimbursement
35 from the department for an individual with a developmental
36 disability who is scheduled to attend the day program, but has not
37 attended the program for 30 consecutive days. A provider who
38 seeks reimbursement in violation of this subsection shall refund a
39 payment received from the department on behalf of that individual,
40 and shall be subject to a penalty of \$1,000 per day, per individual
41 listed on the monthly attendance report as being in attendance, but
42 who was not in attendance. The penalty shall be sued for and
43 collected in a summary proceeding by the commissioner pursuant to
44 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
45 10 et seq.).

46 c. If an individual with a developmental disability who is
47 scheduled to attend a day program is absent from the program for

1 30 consecutive days, the provider of the day program shall, no later
2 than 14 days after the end of the 30 days, notify the appropriate
3 regional office administrator.

4 d. The division shall, no later than 28 days after the end of each
5 month, provide a copy of the monthly report submitted by a
6 provider pursuant to this section to:

7 (1) the appropriate regional office administrator; and
8 (2) the supervisor of a case manager assigned to an individual
9 with a developmental disability who is scheduled to attend the day
10 program.

11 e. The division shall provide:

12 (1) a guardian or authorized family member of an individual
13 with a disability who is scheduled to attend a day program with
14 information pertaining to the individual's monthly attendance at the
15 day program, if requested. The information shall be provided no
16 later than 28 days after the end of the month in which the
17 information was requested; and

18 (2) a random sampling of the monthly reports to the Special
19 Response Unit, which shall audit attendance of individuals with
20 developmental disabilities who are scheduled to attend a day
21 program.

22 f. A regional office administrator shall bi-annually conduct an
23 on-site audit of attendance of individuals with developmental
24 disabilities who are scheduled to attend a day program in the
25 office's region.

26

27 18. a. A physician examining or treating an individual with a
28 developmental disability who resides in a community residence for
29 the developmentally disabled, developmental center, private
30 licensed facility or nursing home, or the chief executive officer or
31 the officer's designee of a hospital or similar institution to which the
32 individual has been brought for care or treatment, or both, may take
33 the individual into protective custody when the individual has
34 suffered serious physical injury or injuries, or the individual's
35 condition constitutes a life-threatening emergency, as defined in
36 section 2 of P.L.2003, c.191 (C.30:6D-5.2), and the most probable
37 inference from the medical and factual information supplied is that
38 the injury or condition was inflicted upon the individual by another
39 person by other than accidental means, and the person suspected of
40 inflicting, or permitting to be inflicted, the injury upon the
41 individual is a staff member of a community residence for the
42 developmentally disabled, developmental center, private licensed
43 facility, or nursing home where the individual resides and to whom
44 the individual would normally be returned.

45 b. The physician or the chief executive officer or the officer's
46 designee of a hospital or similar institution taking an individual
47 with a disability into protective custody shall immediately report

1 the action and the condition of the individual with a developmental
2 disability to the department by calling its emergency telephone
3 service.

4 c. A physician or chief executive officer or the officer's
5 designee who fails to comply with the provisions of this section
6 shall be subject to a penalty of \$500. The penalty shall be sued for
7 and collected in a summary proceeding by the commissioner
8 pursuant to the "Penalty Enforcement Law of 1999,"
9 P.L.1999, c.274 (C.2A:58-10 et seq.).

10

11 19. a. An agency or organization that causes a written,
12 individualized habilitation plan to be developed pursuant to section
13 10 of P.L.1977, c.82 (C.30:6D-10), on or after the effective date of
14 P.L. , c. (C.) (pending before the Legislature as this bill), for
15 an individual with a developmental disability residing in a
16 community residence for the developmentally disabled,
17 developmental center, private licensed facility, or nursing home
18 shall not include the Social Security number of the individual on the
19 plan. In the case of an individualized habilitation plan developed
20 prior to the effective date of P.L. , c. (C.) (pending before
21 the Legislature as this bill), the Social Security number of the
22 individual shall be removed from the plan within 60 days of the
23 effective date of P.L. , c. (C.) (pending before the
24 Legislature as this bill).

25 b. A private agency or organization that violates the provisions
26 of subsection a. of this section shall be subject to a penalty of \$250
27 for the first offense and \$500 for each subsequent offense. The
28 penalty shall be sued for and collected in a summary proceeding by
29 the commissioner pursuant to the "Penalty Enforcement Law of
30 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

31 c. In addition to the requirements for the development,
32 revision, and review of an individual habilitation plan pursuant to
33 sections 10 and 12 of P.L.1977, c.82 (C.30:6D-10 and C.30:6D-12),
34 a plan developed, revised, or reviewed for an individual with a
35 developmental disability shall be provided to the community
36 residence for the developmentally disabled where the individual
37 resides, the case manager of the individual with a developmental
38 disability, and the case manager's supervisor, as applicable.

39 d. If a guardian or authorized family member of an individual
40 with developmental disabilities residing in a community residence
41 for the developmentally disabled, developmental center, private
42 licensed facility, or nursing home is unable to attend the
43 development, revision, or review of the plan, a copy of the plan
44 shall be provided to the guardian or authorized family member of
45 the individual, and the guardian or authorized family member, as
46 appropriate, shall sign and return a copy of the plan to the agency or

1 organization responsible for the development, revision, or review of
2 the plan.

3
4 20. The Commissioners of Human Services and Health shall
5 adopt rules and regulations, pursuant to the "Administrative
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
7 carry out the provisions of this act.

8
9 21. This act shall take effect on the 180th day after the date of
10 enactment, but the Commissioners of Human Services and Health
11 may take such anticipatory administrative action in advance thereof
12 as shall be necessary for the implementation of this act.

13
14
15 STATEMENT

16
17 This bill is designed to provide protections for individuals with
18 developmental disabilities residing in community residences for the
19 developmentally disabled, developmental centers, private licensed
20 facilities, and nursing homes. "Community residences for the
21 developmentally disabled" are defined in the bill as including, but
22 not limited to, group homes and supervised apartments. The bill
23 also includes protections for individuals with developmental
24 disabilities who attend day programs in the community.

25 Under the provisions of the bill, if an inspection of one of these
26 residences or programs by the Department of Human Services
27 (DHS) or the Department of Health (DOH), as applicable, requires
28 the submission of a plan of to correct deficiencies and that plan has
29 not been successfully implemented within 30 days, an individual
30 with a developmental disability is to be removed if it is determined
31 that failure to implement the plan threatens the individual's health
32 and well-being. For a repeated failure to implement the plan, a
33 license may be revoked, or any other negative action may be taken
34 against the provider of the services.

35 In the case of a developmental center, which is inspected by the
36 Division of Health Facilities Evaluations and Licensing in DOH and
37 is required to comply with federal standards, the bill also requires
38 removal of an individual if failure to implement a plan of correction
39 threatens the individual's health and well-being, and provides that
40 the developmental center is subject to negative action against its
41 certification, in accordance with federal regulations.

42 The bill also requires a staff member providing direct care to
43 individuals with developmental disabilities to annually undergo an
44 examination by a physician to ascertain physical and mental ability
45 to fulfill job duties. The physician is to provide a statement and
46 complete a form indicating ability to perform each duty. Failure to
47 provide these documents may result in non-payment, recovery of

1 prior payments, and no resumption of payment until a staff member
2 submits the statement and form. A staff member employed by DHS
3 retains any available right of review by the Civil Service
4 Commission.

5 If an individual with a developmental disability is incapable of
6 managing his own funds, a staff member is restricted from making
7 purchases and disbursements that do not reflect specific needs of
8 the individual. Over a four-year period, the Office of Auditing in
9 DHS is to review a sample of one month's receipts for purchases
10 and disbursements made on behalf of the individual. A case
11 manager and the case manager's supervisor are also to review a
12 random sample of receipts when they conduct visits to residences.
13 If it is determined that purchases or disbursements do not reflect the
14 individual's specific needs, that fact is documented and the
15 Commissioner of Human Services or the commissioner's designee
16 is to be advised. In addition, if there is evidence of an inappropriate
17 purchase or disbursement entailing an egregious amount, the
18 Attorney General is to be notified.

19 The bill also requires staff members to annually attend a
20 continuing education program and demonstrate the ability to
21 provide physical assistance to individuals with developmental
22 disabilities under their care. For individuals with developmental
23 disabilities who reside in community residences for the
24 developmentally disabled and attend day programs, a staff member
25 of these residences is to notify the placing agency of a lapse in
26 attendance at a day program that exceeds five days, except for
27 vacations or medical reasons. The bill also limits provisional
28 licenses to a three-month, rather than the current six-month, period.

29 The bill provides for oversight of case management and requires
30 a case manager to provide a supervisor with a written report
31 pertaining to care and safety of an individual with a developmental
32 disability when monthly visits to individuals with developmental
33 disabilities are conducted pursuant to section 8 of P.L.1983, c.524
34 (C.30:6D-20). Reports are to be sent to the guardian or authorized
35 family member of the individual, and shared with others if the
36 guardian or individual so authorizes. In addition, individuals'
37 records are to be reviewed and the reviews are to be documented.

38 Over a three-year period, a case manager's supervisor is to visit
39 100 percent of the individuals with developmental disabilities who
40 are assigned to the case manager, except that individuals who are
41 their own guardians may decline. After three years, if the
42 supervisor determines that individuals are not at risk for abuse,
43 neglect, or exploitation, the supervisor visits may be reduced to one
44 every four years. Visits are to be conducted in coordination with a
45 case manager who is unaffiliated with, and unfamiliar to, the
46 assigned case manager, and written reports about the visits are to be
47 provided to the guardian or authorized family member. A different

1 case manager is to be assigned if it is determined that the individual
2 would benefit from such a change.

3 In addition, the Office of Licensing in DHS is to annually
4 conduct routine unannounced visits of 25 percent of community
5 residences for the developmentally disabled Statewide.

6 The bill requires the Special Response Unit in DHS to compile
7 data about investigations and issue an annual report, which is to be
8 available on the DHS website and contain non-identifying
9 information about individuals with developmental disabilities. The
10 bill also provides for oversight of providers of day programs for
11 individuals with developmental disabilities by requiring that
12 providers submit monthly attendance reports to the Division of
13 Developmental Disabilities (DDD). The providers are subject to a
14 penalty of \$1,000 per day, per individual, for seeking
15 reimbursement for an individual who is scheduled to attend, but has
16 not attended, the program for 30 days. Day program providers are
17 also to notify regional office administrators of non-attendance.
18 DDD is to provide a guardian or authorized family member with
19 information pertaining to attendance, and provide SRU with a
20 sampling of the monthly attendance reports for SRU to audit. A
21 regional office administrator is also to biannually conduct on-site
22 audits of attendance reports.

23 The bill provides physicians and chief executive officers of
24 hospitals with the authority to take an individual into protective
25 custody if there is suspicion that an injury was inflicted by a staff
26 member. Failure to comply would result in a penalty of \$500.

27 The bill also imposes a fine of \$250 for the first offense and
28 \$500 for the second offense of including an individual's Social
29 Security number on an individualized habilitation plan (IHP), and
30 requires that a copy of an IHP be provided to the community
31 residence for the developmentally disabled where the individual
32 resides, the individual's case manager, the supervisor, as well as the
33 guardian or authorized family members if they are unable to attend
34 the development, revision, or review of an IHP.

35 Lastly, the bill provides for rule making and has a delayed
36 effective date of the 180th day after the date of enactment, and
37 permits prior administrative action in advance of that date.